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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,955	02/20/2002	Robert Swift	3728-0103P	3035
2292	7590	01/27/2006	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			CHIN, PAUL T	
			ART UNIT	PAPER NUMBER
			3652	
DATE MAILED: 01/27/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/077,955	SWIFT ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	PAUL T. CHIN	3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 10 November 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-3,5,7-12,21,22 and 24-26 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,5,7-12,21,22 and 24-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 02 April 2004 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

1. Applicant's proposed amendment filed November 10, 2005, and the arguments presented therewith have been fully considered and they are persuasive. The prior claim rejections have been withdrawn. However, the arguments are moot in view of a new ground of rejection. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL.

### ***Claim Objections***

2. Claim 26 is objected to because of the following informalities: it appears that claim 26 should depend on claim 25 because claim 24 does not recite "a frame". Note that only claim 25 recites "a frame" in line 2. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3,7-10,12,21,22, and 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Steltz (3,709,389).

Steltz (3,709,389) discloses a hydraulic refuse or dumpster comprising a body portion (1) sized and constructed to be conventionally used while being inverted or operated; a cylinder (30,31) to open or close a door (43) movable by hydraulic pressure applied to the cylinder; a pump (51) (see Fig. 6); a motor (52); a reservoir or tank (lines 51-62 of Col. 4); a power source (lines 46-48 of Col. 5) for providing the pump; a manually operated control switch (67) located on the body for transmitting power to the pump (see

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lines 43-62 of Col. 5); a controller having a cable (62), fluid lines (65,66), and pressure lines (53,54), which can be considered as a receiver for receiving a signal from a transmitter (60) for remotely controlling the control signal to the receiver to operate the pump when the hydraulic dumpster is suspended. Note that the refuse can be suspended from lugs (69,70) by a hook (89) (Fig. 7) of a winch (76) or by the arms of a truck (Fig. 8).

Re claims 2 and 9, Steltz (3,709,389) shows an enclosure (4,21,22) (fig. 2) and a mount (6) having a planar portion and two rails (7) (see Fig. 2).

Re claims 3 and 10, a solenoid valve (55) is shown as the diagram 6.

Re claims 21 and 22, Steltz (3,709,389) shows the manually operated control switch(67) comprises open, closed, and off positions by a key (see lines 49-62 of Col. 5).

Re claims 24-26, figure 2, as broadly as recited, shows a U-shaped rails (7) and a plate (6), which can be considered as a frame and the rails are connected to the frame. Note that the frame has plural portions, where two of U-shaped rails (7,7) are attached to, wherein a U-shaped rails (7) is attached to each one of the portions.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ward's device (5,359,942) in view of Bounds (Re. 36,685) (see PTO-892).

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Steltz (3,709,389), as presented above, does not show that the enclosure is being made of a metal. However, Bounds (Re. 36,685) discloses a discharged opening (11) comprising a metal plate (27) (Fig. 3, Col 6, lines 38-50). Accordingly, it would have been obvious to those skilled in the art to provide the enclosure (21,22) of Steltz (3,709,389) to be made of metal as taught by Bounds (Re. 36,685) to provide stiff and reliable enclosure to protect the hydraulic devices.

***Response to Arguments***

7. Applicant's arguments with respect to claims 1-3,5,7-12,21,22, and 24-26 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Applicant's amendment (the addition of new structural limitations in claims 1 and 8 new in combination with other structural limitations) necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (571) 272-6922. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*ptc*

PTC

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